
United States
Circuit Court of Appeals

For the Ninth Circuit.

J. H. PETERSON,
Petitioner and Appellant,
vs.

R. L. SABIN, as Trustee of the Estate of the ROHR-
BACHER AUTOMATIC AIR PUMP COM-
PANY, a Corporation, Bankrupt,
Respondent and Appellee.

In the Matter of ROHRBACHER AUTOMATIC
AIR PUMP COMPANY, Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, a Certain Order and Judgment of
the United States District Court
for the District of Oregon,
and

Transcript of Record

Upon Appeal from the United States District Court for
the District of Oregon.

FILED

FEB 3 - 1914

No. 2354

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

IN BANKRUPTCY—No. 2522.

In the Matter of ROHRBACHER AUTOMATIC
AIR PUMP COMPANY,

Bankrupt.

Petition for Revision.

To the Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now J. H. Peterson and complaining of the
order and judgment made and rendered on December
15th, 1913, against this complainant by the Hon.
Chas. E. Wolverton, Judge of the District Court of
the United States for the District of Oregon, says:

That he is a creditor in the sum of three thousand
dollars (\$3,000) of Rohrbacher Automatic Air Pump
Company, bankrupt.

On September 11th, 1913, Rohrbacher Automatic
Air Pump Company was adjudged a bankrupt by
the District Court of the United States for the Dis-
trict of Oregon, and the cause referred to Chester
G. Murphy, Esq., one of the referees in bankruptcy
for and within said district. On the 22d day of
October, 1913, J. H. Peterson filed with said ref-
eree his duly verified proof of claim as a secured
creditor, stating therein that his debt was secured
by a chattel mortgage executed and delivered to com-
plainant by the bankrupt on or about October 29,
1912, and covering all the property owned by the
mortgagor and consisting of machinery, tools, equip-
ment, supplies, office furniture and fittings and safe.

The fact and the amount of the debt were admitted by the trustee, but objection was made by him to the allowance thereof as a secured [1*] claim on the ground that the mortgage was void *in toto*.

The matter having been submitted to the referee, upon a stipulated statement of facts, a copy of which is hereto attached and marked Exhibit "A," the referee, on November 13, 1913, held the mortgage void *in toto* and disallowed petitioner's claim as a secured creditor with leave to petitioner, however, to file a claim as an unsecured creditor.

On December 12, 1913, upon petition of J. H. Peterson, this cause came on for hearing before said Judge to review the proceedings and final order of said referee made and based upon said agreed statement of facts. Upon the proof of claim filed by petitioner and upon the agreed statement of facts, your petitioner contended in said District Court, and he now contends in this court:

First: That upon the facts set forth in said agreed statement of facts, the machinery, tools, equipment, office furniture and fitting and safe passed into the hands of the trustee in bankruptcy charged with a lien in favor of petitioner by virtue of said chattel mortgage.

Secondly: That by the laws of the State of Oregon a chattel mortgage is not void *in toto* as to creditors of the mortgagor, though void as to a portion of the property which the mortgage purports to cover, because as to that property the right of possession, to sell the same and to use the proceeds as the mort-

*Page-number appearing at foot of page of original Petition for Revision.

gagor saw fit, is either impliedly reserved or granted to the mortgagor, either in the mortgage or by subsequent collateral agreement between the parties.

[2]

Thirdly: That the mortgage held by petitioner, though void as to creditors of the bankrupt in so far as it purports to cover "supplies," is nevertheless valid as to the machinery, tools, equipment, office furniture and fittings and safe.

Fourth: That petitioner is entitled to prove his claim as a secured creditor and that his claim should be allowed as a secured creditor because of the mortgage set forth in said stipulated statement of facts.

On December 15th, 1913, said Judge rendered an opinion in this cause holding petitioner's mortgage void *in toto*, and there was made and entered in said District Court and in this cause an order and judgment, a copy of which is hereto annexed and marked Exhibit "B," disallowing petitioner's claim as a secured creditor and affirming in all respects the final order of said referee.

That said order of the District Court was erroneous in matter of law because: First, it declares petitioner's said mortgage void *in toto* as to creditors of the mortgagor; secondly, it fails to declare said mortgage of petitioner valid as to the property mentioned therein and as to which no power of sale with a right to the proceeds was reserved or granted to the mortgagor; thirdly, it disallows petitioner's claim as a secured creditor against the bankrupt; fourth, it affirms the order of the referee disallowing peti-

tioner's claim as a secured creditor against said bankrupt.

Wherefore, your petitioner, feeling aggrieved because of such order and judgment, asks that the same may be revised, in matter of law by your Honorable Court, as provided in section 24b of the bankruptcy law of 1898, and the rules and practice of in such cases provided.

J. H. PETERSON,
Petitioner. [3]

State of Oregon,
County of Multnomah,—ss.

I, J. H. Peterson, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of facts therein contained are true according to the best of my knowledge, information and belief.

[Seal]

J. H. PETERSON.

Subscribed and sworn to before me this 23 day of December, 1913.

M. M. MATTHIESSEN,
Notary Public for Oregon. [4]

[Admission of Service of Petition for Revision.]

Due service of the within petition for revision by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, December 23, 1913.

SIDNEY TEISER,
Attorney for R. L. Sabin,
Trustee of the Estate of Rohrbacher Automatic Air
Pump Company, a Corporation, Bankrupt.

[Endorsed]: Petition for Revision. Filed Dec.
26, 1913.

**[Order Allowing Petitioner to January 25, 1914, to
File Certified Transcript of Proceedings in
U. S. Circuit Court of Appeals for Use upon
Petitioner's Petition for Revision.]**

[Title of Court and Matter.]

For sufficient cause shown, it is hereby ordered that the petitioner herein have to and including the 25th day of January, 1914, in which to file in the office of the clerk of this court a certified transcript of the proceedings had in this cause in the District Court of the United States for the District of Oregon for the use of this court upon the petitioner's petition for a revision of order and judgment of said District Court made and entered on the 15th day of December, 1913.

Dated this 26th day of December, 1913.

WM. B. GILBERT,
Circuit Judge.

[Endorsed]: No. 2354. In the United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time. Filed Dec. 29, 1913. F. D. Monckton, Clerk.

